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SUPREME COURT, U.S.
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No. 315

In the Supreme Court of the United States

October Term, 1948

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In the Supreme Court of the United States

OCTOBER TERM, 1905.

HARRIET T. JAMES, ADMINISTRATRIX OF Charles P. James, deceased, appellant,
v.
THE UNITED STATES, APPELLEE.
No. 215.

APPEAL FROM THE COURT OF CLAIMS.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES, APPELLEE.

STATEMENT.

Since the brief of appellee was printed and filed we have discovered certain matters that we think pertinent to this case, and, with the consent of the court, submit the same for its consideration in connection with our original brief.

I.

If the provision in the appropriation act of 1891 repealed the general salary act of 1886, which we do not admit, it was because the appropriation act contained a provision that the amount appropriated

"should be full compensation for the services for the fiscal year," and the further provision "that all acts or parts of acts in conflict with this act are hereby repealed."

These same provisions are in the appropriation act of 1892, where the salary was again fixed at $4,000. The provision for $5,000 compensation in the act of 1891 was in conflict with the provision for $4,000 compensation in the act of 1892; hence if the acts are to be given repealing force, the act of 1892 repealed the act of 1891 and the salary of Judge James at the time of his retirement, so far as the acts of Congress are concerned, was $4,000, and if, as we contend, he was the judge of a legislative court, Congress had the power to so reduce his compensation from the amount fixed in the act of 1891.

The paramount question is, what was the legal salary of Judge James when he retired, not what was he paid? The crucial test to be applied is, had Judge James when he retired on December 1, 1892, a cause of action against the Government for the difference between the salary as then fixed and which he was thereafter paid under the provisions of section 714, and the salary as fixed by the act of 1891. No such legal obligation could possibly exist; therefore the act of Congress appropriating a deficiency in 1895 was not founded upon any legal obligation, but was a mere bounty. Since the Supreme Court of the District of Columbia is only a legislative court, Congress could raise or reduce the salary at will, and assuming for the purpose of this argument that Judge James was

entitled to avail himself of the provisions of section 714, Revised Statutes, he could only do so to the extent of the legal salary he was entitled by law to receive at the date of his retirement. Upon his retirement, any right, if any, that he had to receive compensation from the Government was by virtue of section 714, and such right could only be measured by the legal salary to which he was entitled at the date of his retirement, and not by any subsequent bounty which Congress might bestow.

II.

Referring to the interpretation that Congress has placed from time to time upon the political status of the District of Columbia, and our contention that Congress has regarded the courts of the District of Columbia as courts created by Congress under the power reserved to it in clause 17, section 8, Article I of the Constitution, special attention is called to the act of February 1, 1871. Under this act Congress created a Territorial government for the District of Columbia. In the first section of that act (16th Stats., p. 419) appears the language generally used by Congress in the organization of Territories of the United States, namely:

> That all that part of the territory of the United States included within the limits of the District of Columbia be, and the same is hereby, created into a government by the name of the District of Columbia, etc.

The word "territory" is there used in the sense that it is generally used by Congress and by the courts as

referring to the territory of the United States not included within the States. It refers to territory belonging to the United States. Under this act Congress established a territorial government for the District of Columbia, provided for the appointment of a governor, the election of a legislature, and conferred upon that legislature the general legislative authority vested in the legislatures of the various Territories. Among other things in section 25, page 424, Congress provided—

> That the judicial courts of said District shall remain as now organized until abolished or changed by act of Congress; that such legislative assembly shall have power to pass laws, modifying the practice thereof, and conferring such additional jurisdiction as may be necessary to the due execution and enforcement of the laws of said District.

Before the Supreme Court of the District of Columbia can be declared a court of the United States, ordained and established under Article III of the Constitution, it will be necessary to declare the above expression of Congress unconstitutional, for no Territorial legislature has any power to confer jurisdiction upon a court of the United States established under Article III of the Constitution, nor has Congress any power to delegate its legislative authority to any inferior legislative body for that purpose.

III.

In support of the argument set forth in our brief, to the effect that section 714 Revised Statutes applies only

to judges of the courts of the United States, ordained and established under Article III of the Constitution, it is submitted that all the legislation regarding this matter points directly to the judges of constitutional courts and not to the judges of legislative courts. This provision of the statute was originally enacted as the only means by which superanuated judges of the Federal courts could legally be retired. No such necessity arose as to legislative courts, whether their tenure of office be during good behavior or not, for the Congress had power to retire those judges and fill their places, and undoubtedly the President, in the exercise of his Executive authority, would have like power. In 16th Stats., 81, where Congress, by special act, retired the United States district judge for the Eastern District of Texas before he had reached the age of 70 years, the act of Congress is entitled "An act to facilitate the administration of justice in the State of Texas." Congress was not pensioning the district judge for the Eastern District of Texas. It was legislating in the only way it could, to put in his place a man physically able to perform the duties of that office, and that was the intention of Congress when it passed the general provision contained in section 714.

Respectfully submitted.

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Assistant Attorney-General.

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